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Current Topics.

Lord Haldane.

THE TIME is not yet when the true value of the extensive and arduous work of the late Lord HALDANE can be assessed with any degree of confidence; but no one can deny that he had won for himself a distinguished place among leaders in at least four distinct fields of activities, namely, public administration, philosophy, education, and the law. It is remarkable how opinion has changed about his work as War Minister in the period 1905–1912, and how unanimous the verdict appears to be to-day that it was Lord HALDANE's imagination and efficiency in administration at the War Office that supplied the keystone to our national safety in the early years of the Great War. Idealism was the keynote of his philosophy. His contributions to that study are, however, those of an exponent, rather than of a pioneer. His favourite theme was the relation of philosophy to the physical sciences. His services to higher education were manifold and valuable. He was a great believer in the importance of education for the welfare of the State and was indefatigable in his activities to further the cause of adult education. He shared with Lord BALFOUR the unique honour of being at the same time Chancellor of two universities—Bristol and St. Andrews. Lord HALDANE's record in the law is one of success all along the line. His culture, prodigious energy, and timely opportunity as Lord DAVEY's "devil," won for him immediate success at the Chancery Bar. As a leader, he made a name for himself as an acute and formidable advocate. He was assisted by two remarkable successes before the House of Lords in *Cowley* v. *I.R.C.*, 1899, A.C. 198, and *Brandts* v. *Dunlop*, 1905, A.C. 454. His tenures of the Lord Chancellorship were short and accordingly he had in that office comparatively little opportunity to exercise lasting influence upon our law. Nevertheless, it was during his second tenure of office that the Property Acts of 1925—in the framing of which he had always taken the keenest personal interest and for the welfare of which in practice he expressed deep concern—finally became law. Lord HALDANE's judgments will always be read with interest and treated with the highest respect. His death is generally and sincerely mourned. There is lost to the State one of the greatest, most industrious, most cultured and most devoted of her servants.

Hard Cases under the Legitimacy Act, 1926.

IT WAS inevitable that a number of the above would appear with the passage of time, and an amending Act is required to remove injustice to grandchildren when an illegitimate son predeceases his parents. This situation is partly dealt with by s. 5, the effect of which is that where an illegitimate person dies after the commencement of the Act and before the marriage of his parents, leaving any children, the latter shall take the same interests in property as if their father had been rendered legitimate at the date of the marriage of his parents. The Act does not deal with the converse case of a person dying after the marriage of his parents, but before the commencement of the Act, leaving children. The latter are unable to inherit under the will or intestacy of their grandfather, on his dying after the commencement of the Act. The reason is that s. 1 provides for legitimation by subsequent marriage of parents, but only on condition that the illegitimate person is living at the commencement of the Act or the date of the marriage, whichever last happens. The consequences are shown in the case of married couples whose eldest son was born before the marriage, which may have taken place shortly after the birth and perhaps forty years ago. Nevertheless, if the eldest son died before the 1st January, 1927, when the Act came into force, and his father dies on a subsequent date, the eldest son's children are disinherited, unless their grandfather left a will in which special provision is made for them. This is contrary to the spirit of the Act, and there would apparently be no disturbance of vested interests, or grave interference with the general scheme, if an amending Act were to place all the children on an equal footing in cases such as the above.

"In any Action."

THE DEFENDANTS in a recent action for alleged libel subpœnaed as a witness a person not a party to the action, and required him to produce various books of his financial dealings which they deemed material on the question of damages. The subpœnaed witness was granted a rule *nisi* requiring the defendants to show cause why the writ of subpœna served on him should not be set aside as being oppressive, and an abuse of the process of the court, and when the matter came before the Divisional Court on the 17th ult. (*Rex* v. *Investors' Review, Ltd.; ex parte Wheeler*, 72 SOL. J., 570), a preliminary objection involving an interesting and important point of practice and procedure was upheld, and the rule *nisi* struck out. The preliminary objection was that the present application to set aside the writ of subpœna was an application "in an action" within Ord. 52, r. 2, of the Rules of the Supreme Court, which provides that: "No motion or application for a rule *nisi* or order to show cause shall hereafter be made in any action . . ." The proper course, said counsel showing cause, dealing with the preliminary objection, was to apply to a Master in Chambers. The Lord Chief Justice, in considering the effect of the preliminary objection upon the jurisdiction of the court, said that one party contended that the application was one "in an action," and could not be heard by the Divisional Court, while the other side submitted that, though it had reference to and was connected with an action, it was not, however, an application "in an action." It was clear, said his lordship, that if such an application had been made by a party to the action, it would have been made "in the action." The distinction, although a fine one, is clearly appreciable, but if it were held that an application by a person connected with a case but not actually a party to the action, was not an application "in the action," and so within the jurisdiction of the Divisional Court, it is not difficult to imagine the increased labour and expense which might result from an unwilling witness's efforts to avoid being involved, however innocently, in an action.

Wanted—A New Bastardy Act!

Among the many branches of our law which need rationalising and remodelling is the law relating to affiliation. At present it is a collection of statutory provisions, having their genesis in the poor law, modified by later Acts when public opinion was prepared to treat the unmarried mother and her offspring with more generosity; and a mass of legal decisions, made contradictory and confused by highly artificial extensions of simple expressions such as "single woman," and by very technical solutions of problems of procedure which, with a well drafted Act, ought never to occur. Difficulties arise through the partial application only of the Summary Jurisdiction Acts, ill understood by Parliamentary draughtsmen and those who instruct them. It has been airily said in Parliament that "the suggestion" has been made that a witness summons cannot now be issued in a matter of bastardy, and those who inadvertently repealed the provision which authorised such a summons are explaining that an Act can be at once repealed and remain in force, though reasons are not offered for this surprising proposition. Unluckily, when a new Bill is drafted the same inexact mental attitude is only too likely to prevail. What is wanted is a careful codification of the substantive law, and an entire repeal of the special code of procedure, the general procedure of the Summary Jurisdiction Acts replacing it. The latter itself needs modernising, but with provisions of general application constantly in use it is much easier to get on. With the law of property, for the moment, off the Parliamentary anvil, perhaps some of those who desire to see our law at once more practical and symmetrical will turn their attention to this less ambitious but none the less urgent subject.

Smoke Abatement and Basic Industries.

Viscount Ednam, trading as the Coneygre Brick Works, was recently summoned at Tipton for failing to comply with a notice of the district council to abate a smoke nuisance at a kiln at Burnt Tree. The case for the prosecution was that the brick-works were badly situated, being below the level of the road, which was often enveloped in black smoke. Emissions from the stack resulted in the sun being shut out over a large area, and the population were deprived of the benefit of the violet rays. The case for the defence was that the manufacture of blue bricks was almost exclusively confined to South Staffordshire, and that the emission of black smoke was indispensable to the industry, which found employment for 4,000 people. The works had existed for over a hundred years, and the stack was 700 feet from the nearest house. After hearing expert evidence and inspecting the kiln during firing, the magistrates dismissed the case, with ten guineas costs against the council. The case exemplifies the problems arising under the Public Health (Smoke Abatement) Act, 1926, thus: Is it better for people to have wages for food in order to live, or to have the violet rays of the sun? The rival schools of thought were represented by two petitions to the bench—one praying for an abatement order, and the other denying that any nuisance existed. It is to be noted that under the above Act, s. 1 (1) (*c*), certain processes in iron and other metals are exempt from the Act, and the Minister of Health may by provisional order exempt any other industrial process, including apparently the manufacture of bricks. After five years, however, the Minister may exclude any process from such exemption so far as smoke nuisances are concerned. By that time the industrialists may have persuaded the health authorities to turn their attention to agriculture, and to advocate restrictions on haymaking owing to the prevalence of hay fever.

Social Defectives.

Any serious innovation in Dominion legislation must inevitably interest the Mother Country; not only may it cause repercussions over here—as in the case of our Australian legacy, the "Tote" Bill, now before Parliament—but it is also the immediate concern of every British subject that his constitutional rights should remain unimpaired throughout the Empire. The Mental Defectives Bill, now before the New Zealand House of Representatives, would appear to require careful consideration. This Bill proposes to establish a board of medical, educational and prison authorities, whose duty shall be to compile a register of all persons who, *though not of unsound mind*, may be classified as feeble-minded, epileptic, or socially defective; the board is to have authority to order the sterilisation of any person so registered, and the marriage of *all* registered persons is to be prohibited. Whilst appreciating the eugenic aspect and commending in principle an attempt to avert the tragedy of the unfit child, the peculiar practical difficulties involved in this method of dealing with the problem must not be overlooked. In particular the liberty of the subject should never be placed at the mercy of loose phrases. We doubt if the courts would find it easy to determine what is a "social defective," and we certainly consider that the interpretation of a phrase which involves the right of the subject to marry and create children should not be left, in the first instance, to the discretion of schoolmasters and prison authorities. The possibilities of abuse are obvious. The extensive litigation in which the unfortunate Mr. Harnett was recently involved showed that risks are inevitable under our Lunacy Acts. How much greater, and how irremediable, would be the dangers if the New Zealand proposals were adopted in this country!

The Too Attractive Shop-window.

A daily newspaper recently reported an "important decision" on obstruction to highways, that in question being caused by a notice in a shop at Middlesbrough, to the effect that, in certain circumstances, treasury notes would be given away. The natural result was a crowd in front of the shop, and the proprietor was summoned in respect of the consequent obstruction to the pavement. According to the report, the defending solicitor argued that the crowd was caused by the united action of the individual members of it, and, therefore, that the trader was not liable. Again, according to the report, this argument prevailed, and the police withdrew the summons. If that be the case, then the authorities applicable appear to have been entirely disregarded. In *R.* v. *Carlile*, 1834, 6 C. & P. 636, a Fleet-street shopkeeper, who was a dissenter, and had just been compelled to pay church rates, placed in his window a caricature of the devil as a "temporal broker," arm in arm with an Anglican bishop, as a "spiritual broker." It was then held that "if a party, having a house in a street, exhibit effigies at his windows, and thereby attract a crowd to look at them, which causes the footway to be obstructed, so that the public cannot pass as they ought to do, this is an indictable nuisance and it is not at all essential that the effigies should be libellous, or (*semble*) that the crowd should consist of idle, disorderly and dissolute persons." This was followed in a case at Manchester before Lopes and Grove, JJ., in 1882, reported 46 J.P. 19. It was also quoted and approved in the two well-known "queue" cases, *Barber* v. *Penley*, 1893, 2 Ch. 447, and *Lyons* v. *Gulliver*, 1914, 1 Ch. 631. These were actions for injunctions sought by the owners of adjacent shops, access to whose premises was hindered by the queues, in *Penley's Case*, to the old Globe Theatre, since pulled down, to see "The Private Secretary," and in *Gulliver's Case*, to the Palladium. The latter went to the Court of Appeal. The basis of all the above decisions was that a person who caused a crowd to obstruct a pavement committed a public nuisance. It is true that, in his vigorous dissenting judgment in *Lyons* v. *Gulliver*, *supra*, Lord Phillimore held that a shopkeeper was entitled to make his window as attractive as possible, and was neither civilly nor criminally responsible for the crowds collected. However, until the House of Lords has an opportunity of agreeing with him, the judgment of the majority of the Court of Appeal is binding on justices in England and Wales.

Concurrent Bankruptcies.

It is now well established that a foreign adjudication in bankruptcy will not affect English movable property unless, *either* (1) the bankrupt was domiciled in the foreign country pronouncing the decree: *Re Blithman*, 1866, L.R. 2, Eq. 23; *or* (2) the bankrupt presented his own petition: *Re Davidson*, 1873, L.R. 15, Eq. 383; or in some other way made himself a party to the bankruptcy proceedings: *Re Craig*, 1916, 86 L.J., Ch. 62; *Bergerem* v. *Marsh*, 1921, 151 L.T. 264.

But English law is still not quite clear on the point as to which of two or more foreign adjudications declared by the courts of different countries and at different times is entitled to priority; and which of the trustees in bankruptcy, therefore, is entitled to, for example, movable property of the bankrupt situated in England. This matter was considered in *Re Hermanos*, 24 Q.B.D. 640. There a firm with a head office in Paris and a branch office in London was declared bankrupt in Paris. Later a bankruptcy petition was presented in England against the firm, and an interim receiver was appointed. The syndic in the French bankruptcy thereupon applied to the court to discharge this order and to stay all further proceedings in England. There was no evidence as to the domicil of those comprising the firm, which had large assets here. Lord Coleridge, C.J., and Fry, L.J., held: (1) that the jurisdiction of the English court being beyond doubt, since there were assets within the jurisdiction, the receiving order was rightly made; and (2) that the fact that a prior bankruptcy had been begun in a foreign country, not shown to be the domicil of the debtors, was no ground for staying proceedings in this country.

Fry, L.J., *ibid.*, pp. 648-9, suggested *three* modes of procedure in the case of such concurrent bankruptcies:—

(i) That each *forum* administer the assets locally situated within its jurisdiction, each *forum* allowing all the creditors to prove, but applying the doctrine of hotchpot so as to produce equality as far as possible;

(ii) That every other *forum* should yield to, and act in aid of, the *forum* of domicil. (This was the alternative favoured by the learned lord justice);

(iii) That priority should be given to the *forum* where bankruptcy proceedings were first begun, irrespective of domicil, provided that there were assets within the jurisdiction. (This alternative, adopted by Dicey, "Conflict of Laws," pp. 482-3, is described by the learned lord justice as "entirely unreasonable").

Commenting on these three alternatives, Fry, L.J., said:—

"There is this broad difference between yielding to the *forum* of the domicil and yielding to the *forum* of the first country which happens to pronounce a man bankrupt: . . . The *forum* of domicil has a right by judgment against the bankrupt to divest him of *all* personal property and vest it in his assignees, and that judgment is said to be of universal validity.

The *forum*, not of the domicil, but of the country in which the debtor may have assets, has no such right to claim universal obedience to its judgment; it has no right to pronounce a judgment which will extend beyond the personal assets locally situate within its jurisdiction."

Good sense, no less than good law, therefore, requires that *mere order of time* should not, *per se*, regulate priority where the subsequent adjudication was made by the courts of the bankrupt's domicil. But consider the case where, in addition to local assets, the bankrupt has also submitted to the jurisdiction, or in some other way made himself a party to the prior proceedings. In such case it may well be that such foreign bankruptcy will be preferred to a subsequent bankruptcy declared by the courts of domicil.

This, it is conceived, is the *ratio decidendi* of *Re Anderson*, 1911, 1 K.B. 896, and the only explanation which will bring it into line with *Re Hermanos*. In *Re Anderson* a domiciled Englishman, entitled to a reversionary interest in personalty in England, was adjudicated bankrupt first in New Zealand and later in England. The reversionary interest had been overlooked in the foreign bankruptcy but was discovered by the English trustee in bankruptcy, who immediately gave notice of his title to the trustees of the fund. Phillimore, J., after emphasizing that the bankrupt "was a party by his solicitor to the (foreign) adjudication in bankruptcy," held that the official assignee in New Zealand was entitled, as against the English trustee in bankruptcy, to the reversionary interest.

As already stated, a foreign adjudication in bankruptcy where the debtor has been a party to the proceedings is equally effectual to vest English movables in the creditors' representatives with an adjudication pronounced by the courts of his domicil. As between two such adjudications, therefore, priority of time seems a fair test.

It is sometimes said that this question as to the priority of concurrent bankruptcies has nothing to do with the ultimate right to the assets. "It merely gives a title *ad colligenda bona*," said Phillimore, J., in *Re Anderson*. But this is not entirely correct, for, in view of the fact that different countries have different rules as to the debts provable in bankruptcy and the order of their payment, it must follow that in certain cases the adjudication of the question of the priority of the concurrent bankruptcies may also materially affect the ultimate right to the assets. H. E. D.

Tolerated Gaming.

The law as to gaming is chaotic and its administration haphazard. It is based on illogical and obsolete legislation, undertaken piecemeal throughout the centuries, sometimes merely repressive, sometimes produced for some supposed advantage to the State, either fiscal or social, all of it running counter to a deep-seated tendency of human nature, which it is indeed, proper to regulate, but impossible to eradicate. The sooner a clean sweep is made, and a new law passed, based on consideration of what is possible and what is impossible, the easier will it be for a consistent policy to be adopted by those responsible for its enforcement.

The ancient statute 33 Henry VIII, c. 9, may be taken as a not unfair sample. It was passed at the instance of the bow and arrow makers, partly at least as a measure of trade protection, but also for the encouragement of archery, the military exercise which had so well served England in the middle ages. That statute, got by a trade dead as the dodo, for objects which ceased centuries ago to have the slightest national importance, is the law under which persons are still bound over not to frequent gaming houses. It complains in a wordy preamble of "logating," a game unknown, except to commentators upon the churchyard scene in "Hamlet," and of "Slydethrifte." The modern equivalent of this latter pastime is "Shove-halfpenny." The *Evening Standard*, of the 23rd June, published a picture of Lady Limerick "trying her luck," at this game on the proper chequered board, at a hospital fête at Bexley. No charity is now complete without some breach of gaming laws which no one understands or respects.

Bowls and tennis are other games for which the "bowyers, fletchers, stringers and arrowehed makers of this realme," had a rod in pickle, but their provision against them was repealed in 1845.

There is in the text-books a list of unlawful games which includes faro, but does not contain poker, a list vaguely supplemented by a diction of Hawkins, J., that he was inclined to add to it any other mere game of chance. We will

not burden our article with an account of when and how the named games, most of them as obsolete as archery, became unlawful.

When we come to lotteries we get confusion worse confounded. The law as to what constitutes a lottery is not in essence, very abstruse. Most lotteries nowadays are partly disguised, but it is rarely difficult to see through the disguise to the reality.

A common form is the "Tombola," a lottery usually instituted in aid of hospital funds, offering substantial prizes, such as motor cars and wireless sets, and often run openly by mayors and magistrates, clergy and police participating.

The tickets are usually expressed to be a receipt for a donation to the hospital, but it entitles the holder to a prize in a draw, and the receipt is mere attempted disguise, a very thin pretence.

"The enforcement of the law relating to lotteries is a matter for the local police," (per the Home Secretary, in the House of Commons, 5th July), who sometimes act on their own initiative, as they are perfectly entitled to do, but who more often hold their hands, either because reluctant to run counter to local feeling, or from a mistaken notion that they can act only on a complaint. The result is that in one town the tombola is stopped; in another it goes on to a finish. It is obviously an unfair burden to place upon a chief of police, under a watch committee, whose members as likely as not are taking an active part in the tombola, to force him to decide whether to proceed, and make himself thoroughly unpopular, or connive at a breach of the law.

But the promoters of the tombolas always have the example of the great sweepstakes to encourage them. Sweepstakes are of course lotteries, the giving of the prizes depending on the chance of drawing a ticket for a horse which may or may not win a race, instead of the draw at once determining the destination of the prize.

Presumably the suppression of sweepstakes as lotteries is left to the discretion of the local police. Certainly the central authorities seem reluctant to intervene. The promoters of the Stock Exchange sweepstake defy action year after year. The camouflage there is ingenious, the prize-giving being nominally dependent upon the arbitrary will of an individual. But everyone knows that by the practice of years, the will is in fact determined by the result of the Derby. The supposed legal difficulties in the way of prosecution are nothing beside the social ones. All classes participate in this great lottery, and it is extensively written up by the press, in the most open manner. The same is true of the Calcutta Sweepstake, which receives an immense gratuitous advertisement all over the world.

The Acts relating to lotteries are as old, ill expressed and inconsequential as any other part of the law relating to gaming. They are apparently intended to suppress private lotteries and permit Government ones. There are no Government lotteries; there are thousands of private ones, big and little, from the huge sweepstakes to the church bazaar raffle, and the administrators of the law are set an impossible and unfair task, to hit a head here and there, yet leave the great army to march on. This is bad for the police, who can pursue no constant policy, and painful for the judge, who in punishing a chance selected victim here and there, knows that he is ploughing the sands and acting inequitably. The course of justice is merely another and less fairly conducted lottery.

The question of the recognition or non-recognition of gaming is one of the most thorny problems of sociology and politics. By the betting tax and the totalisator proposals we have made a definite departure from the old non-committal attitude, but there is a great body of disapproving opinion to be reckoned with. Shirking the issue, however, is useless. It is time for the English people to lay down in modern and clear laws what it really intends to do in the matter of gaming.

A Conveyancer's Diary.

Death Duties in respect of Undivided Shares.

In a letter to *The Times* of the 21st inst., Mr. Percy King, of Cheltenham, draws attention to the really indefensible position taken by the Inland Revenue authorities in the matter of claims for death duties in respect of undivided shares. It seems that notwithstanding the decisions of Eve, J., in *Re Mellish*, unreported (1927, M. 1674), and of Tomlin, J., in *Re Wheeler*, 1928, W.N. 225 (upon which cases we commented in these columns last week), and of the general consensus of opinion among practitioners, the authorities persist in their claim that the pre-1926 practice under which land, which before a deceased person's death had become subject to a trust for sale, was treated as personalty, has been extended by the new Acts to cases of statutory trusts arising by virtue of undivided shares in land.

We have repeatedly urged that this claim cannot be substantiated. But the authorities appear to go so far as to make compliance with their demand a condition precedent to the grant of probate. The least that could be expected from the Inland Revenue authorities, if they refuse to be bound by decisions to which they were not parties, is that they should brook no delay in obtaining authority for their contention. Delay such as that referred to by Mr. King is not far removed from denial of redress.

Appointment of Corporations to be Executors.

Doubts appear at one time to have been entertained whether a corporation aggregate could be executor, principally because they could not prove a will, or at least could not take the oath for the due execution of the office; see "Williams on Executors," 11th ed., p. 152. But there was authority to the contrary, and in fact the practice where a corporation had been named executor was for it to appoint a "syndic" who would receive administration with the will annexed and who was sworn like other administrators.

The Administration of Justice Act, 1920, s. 17, provided that where a corporation having its principal place of business in the United Kingdom was named as the executor of a will of a deceased person domiciled in England, probate of the will might be granted to that corporation in its corporate name. A corporation to which probate was so granted had the same rights and was subject to the same liabilities and duties in all respects as an individual to whom probate was granted.

But s. 17, *supra*, has now been repealed by the Ad. of E.A., 1925, 2nd Sched., Pt. II (which repeal applies whether the death took place before or after the commencement of the Ad. of E.A.). So that the law and practice in force before 1920 would now, in some respect, seem to have been restored. One important modification of this law has, however, been introduced by s. 161 of the Jud. A., 1925. This section empowers the court to grant representation to a trust corporation (see Jud. A., 1925, s. 175 (1), as amended by L.P. (Amend.) A., 1926, s. 3), whether acting alone or jointly with another person, and enables a trust corporation to act accordingly. Section 161 (2) forbids the grant of representation to a syndic or nominee on behalf of a trust corporation.

An officer authorised in that behalf by a trust corporation may act on behalf of the corporation in the swearing of affidavits, the giving of security, and in doing "any other act or thing which the court may require with a view to the grant to the corporation of probate or administration": *ib.*, sub-s. (3).

That is, in effect, power is given for the trust corporation to do all acts to obtain a grant through an authorised officer: see 2 Wolst. & Cherry, p. 500.

Landlord and Tenant Notebook.

Covenant to Insure in Office "approved by the lessor."

The House of Lords have reversed the rulings of the Court of Appeal in *Tredegar* v. *Harwood* and have restored the decision arrived at by Mr. Justice Tomlin in that case: *Tredegar* v. *Harwood*, 44 T.L.R. 790.

The material facts in that case were briefly as follows:—

The respondent was the assignee of a building lease which contained a covenant by the lessee to "insure and ever afterwards during the said term keep insured the said messuage in the joint names of the lessee and the lessor in the Law Fire Office *or in some other responsible office to be approved by the lessor*."

The respondent had, however, mortgaged the premises with a building society, who refused to allow her to insure with the Law Fire Office and insisted on her insuring with the Atlas Company. Although the latter company was a responsible company, the appellant refused to give his consent to the respondent insuring with them on the ground that insurance with any other company than the Law Fire Company would seriously inconvenience him in the management of his estate, it appearing that the appellant was the ground landlord of some thousands of houses in the locality and that it was practically impossible, if these houses were insured in various offices, to check the due renewals of the insurance premiums, and it appearing further that an arrangement had been entered into by the appellant and the Law Fire Office that the latter should keep his agents informed of any default in renewing any of the property insured with them so that the due renewal of the premiums might promptly be effected.

The Court of Appeal appear to have treated the case as if it were one in which the question for determination was whether or not in the circumstances the refusal of the consent of the landlord to insurance in the office proposed by the tenant, which office was admittedly a responsible one, was reasonable in the circumstances, and the Court of Appeal held that the consent of the landlord was being unreasonably withheld, considering that if the office proposed was a responsible one, the landlord must come to a reasonable decision from the point of view of the question whether the office was suitable for the purpose of insurance against fire and must not be influenced by external and extraneous considerations such as that of estate management.

The House of Lords, however, adopted an entirely different line of reasoning in holding that the landlord was entitled to refuse consent.

In the first place, it is important to note carefully the phraseology of the covenant and to observe that the covenant was not of the type providing that consent was not to be unreasonably withheld in the case of a responsible office. The covenant was to insure in a stated office "or in some other responsible insurance office to be approved by the lessor," and if the word "responsible" had been omitted from the covenant it would have been impossible to contend that any office could be properly put forward by the tenant if it did not meet with the landlord's approval; and the House of Lords pointed out that the inclusion of the word "responsible" could not change this primary effect of the covenant. There was a double condition, therefore, to be fulfilled, the first being that the office should be a responsible one, and the second that it should be approved by the landlord.

In conclusion, it might be as well to note that some doubts were cast by the House of Lords on the correctness of the previous interpretations of reasonableness in such cases as *Houlder Brothers* v. *Gibbs*, 1925, Ch. 575, the House inclining to the opinion that the question of reasonableness did not necessarily refer to something which touched both parties to the lease.

Our County Court Letter.

RETAILERS' LIABILITY FOR DEFECTIVE ARTICLE.

In *Morelli* v. *Fitch and Gibbons*, 1928, W.N. 210, the facts were as follows: The plaintiff had asked for a bottle of ginger wine at the Cross Keys Hotel, of which the defendants were licensees, and was offered a bottle at 2s. 6d. The plaintiff required, and was duly supplied with a bottle of "Stone's" at 2s. 9d., but on attempting to open it at his house with a corkscrew, the plaintiff sustained cuts on his left hand by reason of the neck of the bottle breaking. The plaintiff sued the defendants for damages for personal injuries, and the County Court judge at Edmonton held: (1) that the bottle was not of merchantable quality by reason of a defect which made it unfit for the purpose for which it was required; (2) that the goods were bought by description; and (3) that the defendants dealt in goods of that description. Judgment was therefore given for the plaintiff for £21 damages.

The Divisional Court upheld this decision, and Mr. Justice Acton referred to the Sale of Goods Act, 1893, s. 14, under which there is no implied warranty or condition of quality or fitness of goods for any particular purpose, except that under sub-s. (2) where goods are bought by description from a seller who deals in such goods, there is an implied condition as to their merchantable quality. On the above facts the quality of the bottle did not comply with the implied statutory conditions, and Mr. Justice Branson concurred in dismissing the appeal.

The contents of a bottle are also governed by the same sub-section, as appears from *Wren* v. *Holt*, 1903, 1 K.B. 610. The plaintiff was awarded £50 by a jury, who stated in answer to questions by Mr. Justice Wills: (1) That the plaintiff's illness was caused to a large extent by arsenical poisoning due to the defendant's beer, and was contributed to by excessive drinking; (2) That the plaintiff had not relied for the good quality of his beer on the skill or judgment of the defendant. The Court of Appeal upheld the judgment, and Lord Justice Vaughan Williams pointed out that the plaintiff had gone to a tied house, because he preferred the beer of a particular brewery, and that therefore the sale was by description. Lord Justice Stirling observed that although there was an opportunity of inspection, the defect could not have been discovered by that means. Lord Justice Mathew held that it was no answer to the case that the goods were bought across the counter.

The first-named decision, *supra*, followed *British Tramways and Carriage Co. Limited* v. *Fiat Motors, Limited*, 1910, 2 K.B. 831, a case which illustrates the wide range of goods to which the above section applies. Mr. Justice Lawrence gave judgment for the plaintiffs for £2,300 and costs as damages for delay in delivery, expenses for repairs and renewals, estimated cost of reconstruction, and time lost by breakdowns of six Fiat motor omnibuses, which were unfit for heavy passenger traffic in the hilly district of Bristol. The judgment was affirmed in the Court of Appeal, and the Master of the Rolls (afterwards Lord Cozens-Hardy) held that the plaintiffs had relied on the defendants' skill or judgment, and that there was no contract for the sale of a specified article under a patent or trade name, so as to exempt the defendants under the provisio to s. 14 (1). Lord Justice Farwell observed that the phrase "merchantable quality" seems more appropriate to a retail purchaser buying from a wholesale firm than to private buyers, and to natural products such as grain, wood or flour, than to a complicated machine, but it is clear that it extends to both. The definition of goods in s. 62 includes "all chattels personal other than things in action and money," and "quality of goods" includes their state or condition. Lord Justice Kennedy doubted the propriety of holding that the goods were not merchantable as Fiat chassis, as the chief cause of their unfitness was the

unsuitability of their machinery for heavy traffic. They might have been sufficient for light work, and he preferred to base his affirmance of the judgment on the breach by the defendants of the condition of fitness for particular work under s. 14 (1).

Practice Notes.

DIVORCE.

An interesting incident with regard to procedure as to calling witnesses arose during the hearing of the Bonn divorce suit, and indicates a departure from the practice usually followed in the Divorce Division, which is to call the party immediately after the opening of his or her case, subject to interposition of special professional witnesses such as doctors. The following is an account of the incident.

"When Sir Walter Schwabe, K.C., concluded his address it was arranged that French business men should be first called in order that they might be released and allowed to return to Paris.

"Mr. Samuel Jules Daniel Dreyfus . . . was first called.

"Sir Ellis Hume-Williams, K.C., for Lady Bonn, said that he hoped that there would not be a great number of these foreign witnesses called before Sir Max Bonn.

"Lord Merrivale: Sir Walter Schwabe will attend to that.

"Sir Walter Schwabe: After all, it is for us to decide in what order we shall call our witnesses.

"Sir Ellis Hume-Williams: I don't agree. No one ever heard of witnesses being called to prove an alibi before the person charged gave evidence himself.

"Lord Merrivale: That raises a large question, which I don't propose to discuss now.

"Later Mr. Bucknill, junior to Sir Ellis Hume-Williams, asked how far the calling of the foreign witnesses was to go.

"Lord Merrivale said that he had never heard of a case where the court directed counsel on a point of that sort.

"Sir Ellis Hume-Williams protested against a certain witness being called before Sir Max Bonn.

"Lord Merrivale: A question may arise as to whether full opportunities of cross-examination have been afforded, but what authority have I to control Sir Walter Schwabe in the conduct of the respondent's case?

"Sir Ellis Hume-Williams said that it was a question of procedure and practice.

"Lord Merrivale: No. If Sir Walter Schwabe decided not to call Sir Max as a witness, I could not order him to do so. Nor can I say which witness he shall call first and which second.

"Sir Walter Schwabe: This witness is a busy man who has come here at considerable inconvenience, and I have promised to release him as soon as I can.

"Sir Ellis Hume-Williams: I should have thought that it would have been in the interests of justice that we should have the respondent's evidence before we have the confirmation of it.

"Lord Merrivale: Sir Walter has heard what has been said."

Apparently there is no rule or direction laying down the order in which the evidence is to be called.

It has further been the practice, hitherto followed, in a husband's suit, which is defended by the respondent and co-respondent for the respondent's evidence to be given immediately after her counsel's opening, and then for the co-respondent's case to be opened and his evidence given, followed by the respondent's witnesses, and then the co-respondent's. The ground for this presumably, is to prevent the co-respondent from having time to match his evidence, and that of his witnesses with that of the respondent's, and her witnesses, although this might be easily precluded by expelling the co-respondent and his witnesses from the court during the hearing of the respondent's case.

Reviews.

England's Private Und Handelsrecht. Von Arthur M. Curti-zweiter band (Handelsrecht). Berlin: 1928. Springer.

This is the second volume of a survey of English private law written in the German language by a Swiss lawyer, and it exemplifies the wide interest which is being taken on the Continent at the present moment in matters of English law. It purports to deal with our Mercantile Law, but it also covers the law of Torts. The author has made a conscientious attempt to give his readers a full outline of the subject, and on the whole, he is well informed. Unfortunately, he frequently confuses law and business practice, with the result that his statements cannot always be substantiated. The chapter on negotiable instruments and banking is a case in point. It combines a minimum amount of law with a somewhat discursive description of English banking methods. If this qualification be borne in mind, the book, no doubt has its uses; in fact, it enjoys a wide circulation on the Continent, which seems to indicate that it supplies a need.

The Law of Nations. An Introduction to the International Law of Peace. By J. L. Brierly. Oxford: At the Clarendon Press. 1928. pp. 228.

This is a short text-book of the International Law of Peace which Professor Brierly has written in support of the view that "the law of nations is neither a chimera nor a panacea, but just one institution, among others, which we have at our disposal for the building up of a saner international order." It is written by a very competent scholar, with a cool heart and with a nice sense of proportion. It will certainly be read with profit and interest by the general lawyer. And if students preparing for examinations must use abridged text-books, it is a comfort to know that they have now been provided with something different from and altogether superior to the usual type of such literature.

The author deals in the first instance with the origin, character and history of International Law. He then discusses the different types of states as subjects of International Law and their fundamental qualities like sovereignty and equality. There follow chapters on state territory and jurisdiction of states within their territories and on the high seas. Chapters VI, VII and IX deal with intervention, treaties and international organisation. The most interesting and most controversial—possibly too controversial—is the chapter in which the author discusses disputes between states. Perhaps some will be inclined to doubt the necessity, in a book of this size, of the repeated and emphatic warnings against exaggerating the importance of judicial settlement. For no one suggests that settlement of disputes by decisions of international tribunals is the only means of settling disputes. The procedure of conciliation may be useful, although the absence of a single instance after the world war of a state availing itself of this procedure is instructive. An effective international legislature modifying obsolete and unjust rules of law is undoubtedly a powerful instrument for removing sources of international friction, but it is still in an embryonic stage. At present judicial settlement is, after other measures have failed, the ultimate means of disposing of disputes and securing peace.

England's Civil Procedure. Von Arthur Curti. Berlin. Julius Springer. 1928.

Dr. Curti's book on "English Private and Commercial Law" was reviewed last year in this Journal, and the author's

attempt to supply the Continental lawyer with an up-to-date exposition of English law was warmly recommended. The same may be said of the present volume, which deals with civil procedure. The book is divided into four parts. The first discusses the persons concerned in the administration of justice: the bench, the bar, the master, the district registrars, the assessors, the sheriffs, etc. The second part gives a general survey of the organisation and the competence of the higher and lower courts. The third deals with procedure proper with the writ of summons, the procedure before the master in chambers, the trial of the action, the evidence and the execution of the judgment. Part IV is devoted to the subject of appeal. The Appendix contains notes on costs, arbitration and execution of foreign judgments.

The book is intended in the first instance for the use of the practitioner, and the author remarks significantly in the Preface that it might prove particularly useful in view of the fact that "litigation is expensive on the other side of the Channel." However, we are of the opinion that the student of law on the Continent will be able to use with great advantage this lucid exposition of the English law of civil procedure.

The Constitution of Northern Ireland. By Sir ARTHUR S. QUEKETT, LL.D., K.C., Parliamentary Draftsman to the Government of Northern Ireland. Part I: The Origin and Development of the Constitution. Belfast: H.M. Stationery Office. 1928. 3s. 6d. net.

This little book, whose importance must not be measured by its size, is a useful contribution to the study of constitutional development in Ireland. It is designed to form an introduction to the text of the Government of Ireland Act, 1920, and of the amending legislation, which will be issued later as Part II of the work, and Sir Arthur Quekett has efficiently carried out his task, which has been by no means an easy one. After sketching the various attempts made with almost bewildering rapidity in successive years to solve the Irish problem, the author describes how in Northern Ireland a separate Parliament and a Government responsible to it were brought into being, the Parliament consisting of a House of Commons, elected according to the principle of proportional representation, and a Senate composed of two *ex-officio* members (the Lord Mayor of Belfast and the Mayor of Londonderry) together with twenty-four others elected by the House of Commons also on the principle of proportional representation. It is interesting to note how closely the Northern Ireland House of Commons follows, even in small matters, the Westminster model. For example, after hearing the King's speech, they, on their return to their own chamber, assert their right to deal with other matters than those referred to in the speech from the throne, by reading for the first time a Bill "for the more effectually preventing clandestine outlawries." Even in this, as in matters of greater moment, the declared ideal of the party at present in the majority in Ulster is, as the author says, "the close union of Northern Ireland with Great Britain, and this ideal constantly inspires the legislative projects and administrative energies of the Government." To some it may appear anomalous that Ulster with a Parliament of her own should nevertheless send members to the British House of Commons, but the explanation, of course, is that certain matters of Imperial concern are excepted from the legislative powers of the Parliament of Northern Ireland. This is fully explained, and in successive chapters the author deals succinctly with such subjects as the Executive Government, the transfer of services, taxation and finance, the Imperial contribution, and the judiciary. We in this country often complain of the difficulty of threading our way through legislative labyrinths; but we realised that we have brothers in adversity on finding the following paragraph in Sir Arthur Quekett's book: "As the statute book at present stands, in order to ascertain the application to Northern Ireland of a statute passed by the Parliament of the United Kingdom at any time before the transfer of powers, the actual text of the enactment must be read together with the Government of Ireland Act, the Orders in Council made under the Act, and any repealing or amending enactments of the Parliament of Northern Ireland." All students will find the work a welcome addition to the story of Irish history and constitutional development.

VALIDITY OF NOTICE TO QUIT.

Judge Ivor Bowen, K.C., has delivered a considered judgment in a special case under the Agricultural Holdings Act, 1923, argued before him at Oswestry County Court. Three questions were submitted to him by the arbitrator, Mr. Alfred Monsell, of Shrewsbury, regarding Lower Farm, Little Ness, Shropshire, tenanted by Mr. George Birchall. The present landlords, Messrs. Edward and Martin S. Davies, father and son, of Cil, Berriew, Montgomeryshire, had contended that notices to quit served on the tenant by former landlords were bad and ineffective.

The questions which Judge Ivor Bowen was asked to decide were:—

(1) Whether or not the arbitrator has jurisdiction to inquire into the validity of the notices to quit.

(2) Whether or not the landlords, having agreed to arbitrate, are precluded from contending that the tenancy has not been effectively determined by those notices.

(3) Whether or not the notice dated 23rd February, 1928, given by the landlords to the tenant under s. 10 of the Agricultural Holdings Act, 1923, is valid by reason of the fact that that notice was expressed to be given without prejudice.

His Honour held on question (1) that upon the decided cases the arbitrator had no jurisdiction to determine whether or not the tenancy had been determined, and that disputes as to whether the tenancy had been ended by valid or effective notices to quit were not questions of difference arising out of the termination of the tenancy of the holding which the arbitrator is empowered to decide. The common law rights to sue in the King's Courts had not been taken away in every respect by the Agricultural Holdings Acts.

In this case the landlords raised points which they were entitled, if they desired, to have settled by a court of law. These points arose as to the validity of the notices to quit mentioned in the statement of the special case, and as to the legal effects of the tenant giving up possession when served with what the landlords seemed to allege were defective notices to quit. It had been held that s. 16 of the Agricultural Holdings Act, 1923, did not provide for these questions to be dealt with by the arbitrator, and that proceedings at law were not barred. His answer to the first question must therefore be: No.

That answer raised difficulty, and might cause delay, but no doubt the arbitrator in the case would know how to deal with the position in which the parties found themselves, and would give facilities to them to have the dispute as to the notices to quit settled by the competent tribunal. An extension of time to make the award might be necessary, but this was for the arbitrator to deal with.

As to the second question put, it followed from what he (Judge Ivor Bowen) had said that the landlords were not precluded from contending that the tenancy had not been effectively determined. The submission to arbitration, dated 3rd May, 1928, must be taken, in his opinion, to mean a submission to arbitrate before a single arbitrator under the Agricultural Holdings Act, 1923, s. 16. The operation of this section was limited to questions referred to arbitration by other parts of the Act, whether arising during the continuance of the tenancy or after its determination. Having regard to s. 54, this s. 16 appeared to deal only with procedure, thus merely providing the method of the arbitration for questions which in other parts of the Act were referred to arbitration. The submission was signed by the valuers for the parties; it mentioned "the above-mentioned Act" in the copy supplied to the Court, and only impliedly referred to the Agricultural Holdings Act. Disputes as to the validity of the notices did not, in his opinion, come within the terms of this submission, and, therefore, his answer was as given in this judgment.

The question raised in question (3) had been withdrawn by the tenant. If it had been proceeded with, he would have held that the words "without prejudice to the position" did not invalidate the notice referred to in the question.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered gratis. All questions should be typewritten (in duplicate), addressed to—The Assistant Editor, 29, Breams Buildings, E.C.4, and should contain the name and address of the subscriber. In matters of urgency, answers will be forwarded by post if a stamped addressed envelope is enclosed. No responsibility is accepted for the accuracy or otherwise of the replies given.

Rent "inclusive of Rates"—Payment of Water Rate.

Q. 1361. A was the tenant of a house, the agreed rent of which was £60 per annum "*inclusive of rates.*" He has been in occupation for five years, during which period he has paid the rates, including a water rate payable to a water company, and has deducted the rates, other than the water rate, from his rent from time to time. A removed his furniture from the house some time before the date on which he agreed with his landlord to give vacant possession. The following points arise:—

(1) Do the words 'inclusive of rates' include the water rate (*Bourne & Tant* v. *Salmon & Gluckstein, Ltd.*, W.N., 20th April, 1907, is not on all fours).

(2) If water rate is included, can the tenant now deduct the water rate paid in past years?

(3) Can the tenant claim the benefit of the rebate in rates allowed for the period during which there was no furniture in the house?

A. In all the cases in which "rates" have been held to include water rates, the tenement was part of a large block of buildings. In the above-named case Cozens-Hardy, M.R., expressly guarded against deciding that "rates" would include a water rate in respect of a lease of a suburban house, where the tenant might or might not be able to get water supplied otherwise than from a water company. A water rate is a payment for a commodity; it is not "imposed" whether the occupier desires it or not; it varies according to whether, e.g., a hose-pipe is used or a water meter is installed. The assessment on the rateable value is merely a convenient method of calculating the payment for goods supplied, and does not bring the payment within the category of "rates." The answer to (1) is "No"; (2) does not arise; (3) Yes, but he should arrange for the demand notes to be sent to him up to the time he agreed to give vacant possession.

Stock—Transfer.

Q. 1362. Please advise how to carry out the following transaction most effectively and economically: A (the husband), B, his wife, C, their son, and D, their daughter, are the registered joint holders of £994 Consolidated 4 per cent. Stock. C and D are desirous of making a gift of their interest in this stock to A and B. Also A and B are desirous of severing their interest and then of increasing their respective holdings by the nominal amount of £3 each, so that finally A will hold £500 stock and B will hold a similar amount.

A. The four present holders of the stock might join in executing a transfer of half to A and half to B, who could then buy £3 to bring up the amount to £500.

Easement—Drainage—Overflow from Cesspools.

Q. 1363. A few years ago A.B. laid out a piece of freehold land adjoining a private road for building five or six houses. When the first house was erected A.B. constructed a drain from a cesspit at the back of this first house through the back portion of each of the other lots and through and into a piece of land not belonging to A.B. on which the drain discharged. Recently four or five houses have been built on A.B.'s land, but lower down the line of the drain, and each of these houses is drained into a cesspit on the line of the drain with the overflow from the cesspit passing into the drain. The conveyances of the lots along the line of the drain did not reserve, and were not made subject to, the right of the owners higher up the drain to discharge the overflow from their cesspits through the drain. A.B. is willing to grant to the purchaser of one of the houses a right to use the drain, but the question arises whether he can confer a valid right, inasmuch as, when he sold lots lower down the drain, he did not reserve the right to use the drain. It is submitted that, when an owner of land sells part of it, he must expressly reserve any rights he wishes to exercise over the adjoining land. Will you kindly advise whether A.B. can make a valid grant of the right to use the drain.

A. A.B. had no right to make a drain discharging drainage on to land which did not belong to him, without the consent of the owner of that land. Until, therefore, he obtains such consent, or a sufficient time has elapsed for an easement of drainage on to that land to be acquired, A.B. cannot validly grant to anyone a right to use a pipe discharging drainage on to that land.

Compensation for Goodwill.

Q. 1364. By s. 4 of the Landlord and Tenant Act, 1927, a tenant is entitled to compensation for goodwill on quitting his holding "if he proves to the satisfaction of the tribunal that by reason of the carrying on by him or his predecessors in title at the premises of a trade or business for a period of not less than five years goodwill has become attached to the premises," etc. In 1920 A granted a lease to B expiring on the 25th December, 1930. B carried on the business of a greengrocer until September, 1925, when he assigned to C, who from September, 1925, has carried on the business of a butcher. C wishes to claim a new lease in lieu of compensation for goodwill. If the expiration of the period of five years is the termination of the lease, then C will have carried on business for the necessary period. C will have to take proceedings not later than nine months before the termination of the tenancy, at which time he will not have carried on business for the full period of five years. Is C (*a*) entitled to reckon the period during which a different business was carried on by his predecessor towards the necessary five years, or (*b*) is he entitled, notwithstanding the fact that five years will not have elapsed from the time he started his business at the time when he commences his proceedings, to make his claim on the ground that five years will have expired before the termination of the tenancy?

A. C is entitled (*a*) to count the period of the different business as part of the five years, as the section refers to "a" business, and does not stipulate that it shall be "the same" business; (*b*) to make his claim during the course of and prior to the expiration of the five years, as s. 5 contains introductory words of futurity, viz., "would be entitled to compensation under the last foregoing section," i.e., at the end of five years. The difficulty would be in proving, in view of the change of business, that the goodwill is one by reason whereof the premises may command a higher rent. It may have that effect if the premises are situated away from competition, but not if they are in a shopping centre.

Vendor's Remedy for Delay in Completion.

Q. 1365. The question is one of vendor and purchaser on a contract for the sale and purchase of land and delay by the purchaser in completing on the date fixed by the contract. It often happens that the purchaser enters into a contract to buy some property with a fixed date for completion, but he has no intention of buying the property himself, his idea

being to find a sub-purchaser at a profit. The vendor is often kept waiting while a sub-sale is negotiated, and in most cases an ultimate mortgage by the sub-purchaser is fixed up. The vendor gets very annoyed at having to wait for his money. Would you please say what would be an effective and drastic method to adopt to enable the vendor to get his purchase money at the time fixed for completion, and whether there is any alternative to a vendor and purchaser summons. I have a case to-day where my client, the vendor, sold some property in March last to a purchaser, who signed a proper contract (incorporating the National Conditions of Sale in full) with completion (at the purchaser's special request) for the 30th April. The purchaser has been endeavouring to re-sell the property, and has at last apparently found a sub-purchaser, who is taking up a mortgage from a building society. It appears that the sub-purchaser in his application to the building society made one or two errors in connexion with the lease (the property is leasehold), and there is now a question as to the possible refusal of the building society to proceed with the mortgage In the meantime, however, my client, the vendor, is made to wait, although the sub-purchaser and his mortgagee have nothing whatever to do with him. To use the vendor's own words, he has got very tired of waiting and has threatened to "tear up the contract," especially as he has heard that the purchaser is merely a nominee. In this case the deposit is held by estate agents "as stakeholders." Your early reply will be appreciated, and in particular would you please say if the vendor could at once (without giving the purchaser a time limit to pay the balance of purchase money) give the purchaser notice that the deposit is forfeited and the contract rescinded.

A. Under a contract that the purchaser shall pay the balance of his purchase money on a given day, and that on payment thereof the vendor will execute a conveyance, the vendor may bring a common law action for the money: *Yates* v. *Gardiner*, 20 L.J. Ex. 327. He cannot, however, by this means obtain payment of the deposit from a stakeholder. The vendor may act on the forfeiture clause in the conditions of sale and forfeit the deposit, with or without a re-sale, but in view of the court's power to order repayment of a deposit to a purchaser (L.P.A., 1925, s. 49), it is considered necessary to give notice of the vendor's intention. Under the particular circumstances, seven days' notice should, it is thought, be sufficient.

Executors—Statutory Advertisements for Creditors and Claimants.

Q. 1366. Referring to Q. 1201, and the answer thereto, in your issue of the 7th April, was the reference to two newspapers in the last sentence of the answer intended to mean two local newspapers? It has been suggested in some quarters that as, e.g., *The Times* is a newspaper which circulates in all parts of the country, it can be considered as a newspaper "circulating in the place where the deceased resided," and therefore that an advertisement in that newspaper and one other local paper answers the requirements of the Statute, but this, it is thought, is doubtful.

A. The point raised by this questioner has not been actually decided, but the T.A., 1928, s. 27 (1), as originally drawn, made an express distinction between daily London newspapers and local newspapers, and, since in respect of the latter the amending Act repeats the language, the opinion here given is that "a newspaper circulating in the district in which the land is situated" means one published locally, although more than one of the great London daily papers now circulate throughout England.

NOTES OF CASES.

Court of Appeal.

Weld *v.* **Petre.**

Lord Hanworth, M.R., Lawrence and Sankey, L.JJ.
2nd, 3rd and 16th July.

Mortgage—Mortgage of Shares in Company to secure Loan—Default by Mortgagor in Payment of Interest—Subsequent Increase in Value of Shares—Claim to Redeem after many Years' Inactivity—Delay—Laches—Equitable Right Still Subsisting.

In 1900 shares in a company were mortgaged by B to L to secure a loan of £1,000. The loan was not paid off, the interest was in arrear, but the dividends received by the mortgagee cleared the interest up to 1908. Between 1908 and 1916 no dividends were paid, but the mortgagee neither sold, foreclosed, nor obtained a release of the equity of redemption. He elected to stand on his security. In 1916 the company began again to pay dividends, and by 1921 the mortgagee had received in dividends a sum equal to the amount of the loan. L died in 1923, at which date he had received in dividends more than sufficient to repay him the £1,000 principal with interest at the agreed rate from the date of the loan. In 1926 the plaintiffs, the assignees of the equity of redemption in the shares, informed the defendants, the executors of L, that they claimed the right to redeem the security. That right being disputed, a summons was issued, asking (1) that the shares should be re-assigned to the plaintiffs, and (2) that the defendants should account for any sums received in dividends over and above the principal and interest due upon the mortgage. Russell, J., made an order for re-assignment, but held that relief sought under (2) could only be granted in proceedings commenced by writ. The defendants appealed upon point (1), the plaintiffs cross-appealed upon (2). Their lordships dismissed the appeal by the defendants.

Lord Hanworth, M.R., said that the appellants sought to limit the respondents' right to redeem by contending that there had been excessive delay and laches, and that the principle of the limit of twelve years, applicable to a mortgage of freehold by the Real Property Limitation Act, 1874, ought, upon equitable principles, to be applied to this mortgage of personalty. A similar attempt to make the twelve years limit applicable to personalty had, however, been rejected by Kay, J., in *Mellersh* v. *Brown*, 45 Ch.D. 225, and there was no basis for applying a twelve years limit. The cross-appeal would be allowed, as, by the terms of Ord. 55, the secondary relief sought could be granted upon an originating summons.

Counsel: *W. P. Spens*, K.C., and *Eversheds*, for the appellants; *C. E. Jenkins*, K.C., *and B. A. Hall*, for the respondents.

Solicitors: *W. A. Crump & Son; Gregory, Rowcliffe and Co.*, for *Wild & Wild*, Liverpool.

[Reported by G. T. Whitfield-Hayes, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Grimwood *v.* **Aldenham.** Eve, J. 4th July.

Club—Alteration of Rules—Qualification of Members—Power to Alter—*Ultra Vires.*

This was an action in which the plaintiff, suing on behalf of himself and all other members of the City Carlton Club, claimed against the trustees and a member of the executive committee a declaration that a resolution purporting to alter r. 1 of the rules of the Club and passed at the annual general meeting was *ultra vires*, and an injunction to restrain the committee from acting on the resolution. Rule 1 stated that the only persons eligible as members were "British subjects

who profess and will support Conservative and Unionist principles and acknowledge the recognised leaders of the Party." By the resolution complained of these words were deleted and the following words substituted " are in favour of maintaining the unity of the British Empire and of Constitutional principles and are opposed to Socialism." It was contended by the plaintiff that the effect of the resolution would be to admit as members of the club persons who did not belong to the Conservative and Unionist Party.

EVE, J., said the rules stipulated the terms upon which the rules might be altered and they involved the existence of a power to do that subject to certain restrictions. The power was therefore a term of the plaintiff's contract, and in exercise of that power the club passed the resolution to alter the rule. The first difficulty was to discover what jurisdiction the court had to review or criticise the resolution. It must be remembered that the courts did not assume a jurisdiction to control the domestic affairs of clubs or other similar bodies. The power of a court of equity to interfere depended upon the infringement of proprietary rights, but here he did not see what proprietary rights had been infringed. It was alleged that the passing of the resolution was *ultra vires*, but he did not think that any such restriction on the power of the majority ought to be implied. He could not bring himself to hold that the power which the club had could not be applied to modify the qualification as contemplated by the resolution. There was nothing in it inconsistent with the basis on which the club was founded or incompatible with the rights of its members. There was therefore no substantial support for the argument based on *ultra vires*, and the club would continue to be a club in connexion with the Conservative and Unionist Party. The action failed and would be dismissed.

COUNSEL: *G. B. Hurst*, K.C., and *Hodge*; *Archer*, K.C., and *Stamp*.

SOLICITORS: *W. H. Warlow*; *Ellis, Bickersteth & Co.*

[Reported by S. E WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division

In re a Solicitor.

Lord Hewart, C.J., Acton, J., Branson, J. 16th July.

SOLICITOR — PRACTISING ABROAD — MISAPPROPRIATION OF CLIENTS' MONEY—MOTION TO STRIKE OFF ROLL.

On the 9th May, 1928 (see 72 SOL. J., 368), the court refused a motion by the applicants, Crawford, Bayley and Co., a firm of solicitors practising in Bombay, that the name of the respondent, James Stewart Rothery, should be struck off the roll of solicitors of the Supreme Court for alleged misappropriation of clients' money while he was in the employ of the applicants' firm in Bombay, on the ground that the proper course was to take proceedings for the removal of the solicitor's name from the roll of the Bombay High Court. The statutory committee of The Law Society could not deal with the matter as they had no power to take evidence abroad. On the 23rd May, the motion was again before the court, when they were informed that the solicitor's name, at his own request, had in fact been removed from the roll of the Bombay High Court prior to the previous hearing, and it was thereupon ordered that for deceiving the court he should be suspended from practising as a solicitor for six months; and the allegations were referred to the coroner and attorney of the court for inquiry and report. The report, now before the court, found that on one charge the respondent had wilfully and fraudulently misappropriated the sum of Rs.4,000, but no conclusion of fact could be arrived at in respect of the other charges without evidence from India.

Lord HEWART, C.J., said that the substance of the respondent's contention was that the coroner and attorney's investigation was not sufficiently full, and that he (the respondent), had not been given the opportunity of cross-examining a partner of the applicant firm. The conclusion of the coroner and attorney that the respondent had not been genuinely desirous of cross-examining the partner was well founded, said his lordship, and was supported by a comparison of the dates when the partner was in England and might have been cross-examined by the respondent had he desired it. In addition, the respondent at the time he was charged with the misappropriation was willing to leave India at short notice, accept his passage and about £20 from his employers, and write to the High Court requesting that his name be removed from the roll as he was leaving India for reasons of health. The last phrase was one which they might suspect, and the respondent himself had informed them that it had a well understood meaning in India. They ordered the respondent's name to be struck off the roll.

COUNSEL: *S. O. Henn Collins*, for the applicants; *Roland Burrows*, for The Law Society; the respondent appeared in person.

SOLICITORS: *Sanderson, Lee & Co.*; *E. R. Cook.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Rex *v.* Investors' Review Limited: *Ex parte* Wheeler.

Lord Hewart, C.J., Acton, J., Branson, J. 17th July.

PRACTICE AND PROCEDURE—WITNESS SUBPŒNAED—APPLICATION TO SET ASIDE WRIT OF SUBPŒNA—PRELIMINARY OBJECTION—APPLICATION "IN AN ACTION"—RULES OF THE SUPREME COURT, ORDER lii, r. 2.

In an action for alleged libel begun by Rolls Razor (1927) Limited against the Investors' Review, Limited, in respect of a paragraph published by the Defendants on the 7th January, 1928, the question of damages was one of two material issues, and to assist them on this point the defendants issued a writ of subpœna requiring Sir Arthur Wheeler, one of the promoters of the plaintiff company, to attend and produce various books showing accounts of his dealings. On the hearing of a rule *nisi* calling on the defendants to show cause why the subpœna should not be set aside as being oppressive and an abuse of the process of the court, counsel for the defendants, showing cause, took a preliminary objection that the proceedings were misconceived on the ground that this was an application "in an action," and that, therefore, under Ord. lii, r. 2, no motion or application to show cause was to be made. The subpœna, which issued out of the Central Office, not the Crown Office, could be dealt with on the civil side of the court only, and not on the Crown side, and the proper course was to make application to a Master in Chambers from whom the case could go to the Judge in Chambers. After hearing argument on the preliminary objection,

Lord HEWART, C.J., said that it was argued that the present proceeding was governed by Ord. lii, r. 2, and that the application was one in an action. The application was not made by either party to the action, but was made by a proposed witness in the action to set aside a subpœna issued by a party in the action calling on him to give evidence in the action. Had such application been made by a party to the action it would have been made "in the action." After referring to the exact wording of Ord. lii, r. 2, his lordship was of opinion that the preliminary objection was right, and that the words "in any action" should not be read to include "by any party to the action" and the rule *nisi* was struck out.

ACTON, J., and BRANSON, J., agreed.

COUNSEL: *Clement Davies*, K.C., *Sir T. Willes Chitty*, K.C., *Cartwright Sharp*, and *Baillieu*, showed cause; *Jowitt*, K.C., and *St. John Field* supported the rule; *James MacMillan* held a watching brief for the second defendant.

SOLICITORS: *Chamberlain & Co.*; *Clifford-Turner, Hopton and Lawrence*; *A. Russell Jones.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Rules and Orders.

THE COUNTY COURT (No. 2) RULES, 1928, DATED 4TH JULY, 1928.

1. These Rules may be cited as the County Court (No 2) Rules, 1928, and shall be read and construed with the County Court Rules, 1903,(*) as amended.

An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1903, as amended.

A Form referred to by number in these Rules means the Form so numbered in Part I of the Appendix to the County Court Rules, 1903, as amended.

The County Court Rules, 1903, as amended, shall have effect as further amended by these Rules.

2. In Rule 34 of Order II after the words "required to retain the same" the following words shall be inserted:—

"or where the process has issued out of another Court,"

3. The following proviso shall be added to Rule 13 of Order XXIII:—

"Provided that notice need not be given of a payment transmitted from a foreign Court."

4. Rule 23A of Order XXV shall be amended as follows:—

(*a*) In paragraph (1)

(i) the words "Court out of which the warrant is issued" shall be omitted and the words "home Court" shall be substituted therefor; and

(ii) the word "re-issue" shall be omitted and the word "execution" shall be substituted therefor.

(*b*) In paragraph (2) the words "Court in the district of which the warrant is to be executed" shall be omitted and the words "home Court and the warrant is to be executed in the district of that Court" shall be substituted therefor.

(*c*) In paragraph (3)

(i) the words "Court out of which the warrant issued (in this Rule referred to as the 'home Court')" shall be omitted and the words "home Court" shall be substituted therefor; and

(ii) the word "re-issue" shall be omitted and the word "execution" shall be substituted therefor.

(*d*) Paragraph (4) shall be renumbered and shall stand as paragraph (5) and the following new paragraph shall be inserted after paragraph (3) and shall stand as paragraph (4):—

"(4) Where payment is made into a foreign Court to which the warrant has been sent for execution, the Registrar shall—

(*a*) if he is high bailiff as well as Registrar, receive the same in his capacity of high bailiff and as soon as may be notify the fact and amount of such payment to the bailiff holding the warrant.

(*b*) if he is not high bailiff, hand the payment to the high bailiff, who shall as soon as may be notify the same to the bailiff holding the warrant."

(*e*) The word "Part" shall be omitted from the marginal note.

5. Rule 23B of Order XXV is hereby revoked and the following Rule shall be substituted therefor:—

"23B. *Where under execution part of the money is paid into Court.*]—Where under a warrant of execution money is paid in part satisfaction of the execution, or in order to avoid sale, but is paid into the home Court, it shall be deemed to have been received by the high bailiff of the Court (whether home or foreign) in the district of which the warrant is to be executed and the following provisions shall apply:—

(*a*) Where, if the money had been received by the high bailiff, it would be his duty to pay over the same to the Registrar of the Court of which he is high bailiff, or to transmit it in accordance with Order XXVIII, the money paid into Court shall be dealt with as if it had been so received and paid over or transmitted, and the provisions of Order II, Rule 34A, paragraphs (ii) and (iii) shall apply:

(*b*) Where, if the money had been received by the high bailiff, it would be his duty, under sub-section two of section forty-one of the Bankruptcy Act, 1914, to retain the same, the money paid into Court shall be retained in Court:

(*c*) Where the execution creditor becomes entitled to receive the amount so retained, the money paid into Court shall be dealt with as if it had been received by the high bailiff and paid over by him to the Registrar of the Court of which he is the high bailiff or transmitted in accordance with Order XXVIII:

(*d*) Where, if the money had been received by the high bailiff it would be his duty to pay over the same, after deducting the costs of the execution, to the official receiver or trustee in bankruptcy, the high bailiff shall pay to the official receiver or trustee the amount paid into Court after deducting such costs; and the Registrar of the Court into which the payment is made shall pay or transmit to the high bailiff the amount so paid into Court."

6. Rule 24C of Order XXV is hereby revoked and the following Rule shall be substituted therefor:—

"24C. In any case coming within Rule 24A of this Order, or where proceedings under an execution are stayed under section one hundred and twenty-two of the Bankruptcy Act, 1883, or under the Rules made under that section, any money received under the execution shall, when received by the Registrar of the home Court, be dealt with as follows:—

(*a*) If the administration order was made in or the proceedings were stayed by the home Court, the money shall be dealt with as the Judge of that Court shall direct; and

(*b*) If the administration order was made in or the proceedings were stayed by any other Court, the money shall, by such means as the Lord Chancellor with the concurrence of the Treasury shall direct, be transmitted by the Registrar of the home Court to the Registrar of such other Court, and the Registrar of that Court shall pay the amount so transmitted as the Judge of that Court shall direct.

Where in any such case the costs of the execution incurred by the creditor are not allowed out of the money received, the creditor shall be liable for such costs; but they may be allowed as against the debtor, and may on application be added to the debt."

7. In Rule 48 of Order XXV the words "high bailiff" shall be substituted for the word "Registrar."

8. In Rule 5 (4) of Order LB, after the word "proceedings," there shall be inserted the words "under section one or section four of the Act."

We, the undersigned persons appointed by the Lord Chancellor pursuant to section one hundred and sixty-four of the County Courts Act, 1888, and section twenty-four of the County Courts Act, 1919, to frame Rules and Orders for regulating the practice of the Court and forms of proceedings therein, having by virtue of the powers vested in us in this behalf framed the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

W. M. Cann. *T. Mordaunt Snagge.*
J. W. McCarthy. *A. O. Jennings.*
Hugh Sturges. *A. H. Coley.*
S. A. Hill Kelly.

Approved by the Rules Committee of the Supreme Court.

Claud Schuster,
Secretary.

I allow these Rules which shall come into force forthwith.

Dated the 4th day of July, 1928. *Hailsham, C.*

(*) S.R. & O. Rev., 1904, III, County Court, E., p. 89 (1903, No. 659).

Legal Notes and News.

Wills and Bequests.

Satyendra Prasanna, Lord Sinha of Raipur, of Raipur, India, and Queen Anne's-mansions, S.W., formerly a member of the Imperial War Cabinet, the first Indian to become a British peer, formerly Parliamentary Under-Secretary of State for India, and for some years a leading barrister, a Freeman of the City of London, who died in March last, aged sixty-four, domiciled in India, left property in England valued for probate at £538 2s., and in India valued at Rs.2,974,753, making the total value of the estate at current rates about £223,600. He gave Rs.10,000 each to the hospital attached to the Belgatchia Medical College, the trustees of the Sadharan Brahmo Samaj, of Cornwallis-street, Calcutta, the trustees of the Bhowanipur Sanmilani Brahmo Samaj, the Sambhunath Hospital, Bhowanipur, and the Calcutta Orphanage of Bulloram, Deys-street, Calcutta. And if he had not already made provision (as he had intended to do in his lifetime) for the maintenance of the Middle English School and the Charitable Dispensary which he had built, and for many years maintained at Raipur, then he left Rs.50,000 upon trust for investment and the income applied for such purpose.

Sir George Rowland Hill, The Grove, Greenwich, late Record Keeper in the Probate Registry of Somerset House, formerly secretary of the Rugby Union, and in 1904 becoming president, who died in April, aged seventy-three, left £5,314, with net personalty £5,083. On the death of his sister, Judith Madeline, he gives £100 to the Miller Hospital, Greenwich; £60 to the Seamen's Hospital, Greenwich; £30 each to St.

John's Hospital, Lewisham; the Association for the Blind of Kent; Dr. Barnardo's Homes; the Church of England Home for Waifs and Strays; the Church Army; the Salvation Army; the National Society for the Education of Children in the Principles of the Established Church; and the British Orphan Asylum, Slough.

LEGITIMACY ACT.

An application was made at the Clerkenwell County Court recently under the Legitimacy Act, 1926, on behalf of two children of a woman living in North London. She knew a Scotsman who was an officer in the merchant service, and when he was in this country he used to stay with her. Subsequently to the birth of their two children they married, and he had since died. The question was whether the father's domicile was in London or in Scotland.

Mr. Milner Holland, supporting the application, said that at a previous hearing in April an order was made for a declaration subject to proof of the father's domicile, and if the domicile of the father proved to be Scottish there would have to be an affidavit under Scots law.

Mr. Farr, representing the Attorney-General, said there ought to have been an affidavit from the children's grandmother as to the officer's birth, and if that were produced he would be satisfied; but the grandmother had refused.

Mr. Milner Holland: She will not answer at all.

It was stated that she objected to answer on religious grounds.

It was argued that the officer's birth certificate showed he had a domicile in Scotland.

After considerable argument, Judge Bairstow said he would not withhold from the two children whatever benefit they might derive. He would make the necessary order.

THE DUTY OF THE PUBLIC IN CRIMINAL CASES.

Sir Thomas Inskip, the Attorney-General, delivering an address at a luncheon in connexion with the Vacation Course in Education in London recently, said that it would be a real disaster if people came to think that it was not their duty to assist in the administration of the law unless they were officials or lawyers.

Lately it had come to his notice that, possibly because of some recent events and publicity in the Press, a crime which had undoubtedly been committed was proving difficult of proof because a number of people seemed to think it was consistent with their duty to refrain from giving the information which it was within their power to give on matters which happened to have come to their attention.

Sir Thomas, asked by a reporter if he would amplify his statement, said he only wished to correct a general impression that persons should not give information. It was their duty to give any help in their power to the police in tracing crime. He attributed the impression to recent events in connexion with the police and the publicity they had received. Sir Thomas further stated that he had a particular crime in mind when he spoke, but he could not disclose what it was.

FORTY YEARS A REGISTRAR.

Dr. Henry Brierley, who has been a County Court Registrar for forty years, first at Bury and then for thirty years at Wigan, retired from his threefold position of Registrar at Wigan, St. Helens and Widnes recently, and a farewell speech was made to him in Wigan Court by Judge Dowdall on his last appearance.

Dr. Brierley, who is in his eighty-second year, has served under seven judges, attended 1,600 sittings of the court, and dealt with 227,000 cases. Dr. Brierley's close friends include some of the most distinguished personalities in all walks of life. He has made a reputation not only as a lawyer but as an antiquarian and author.

RECORDER AND WOMEN JURORS.

At the Windsor Quarter Sessions, recently, Judge Hugh Murray Sturges, K.C., the Recorder, said it had been the custom at that court not to summon ladies on the grand or the petty jury. This was a great mistake. In these days women had the same rights of citizenship as men, and it was only proper that they should be summoned with men to sit on juries as they did throughout the rest of the kingdom. There was a number of distinguished ladies in Windsor who would be quite willing to carry out the duty which the nation imposed upon them.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 30th August, 1928.

	Middle Price 22nd Aug.	Interest Yield.			Yield with Redemption.		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	86½	4	12	6	—		
Consols 2½%	56	4	10	0	—		
War Loan 5% 1929-47	102⅜	4	17	6	4	17	6
War Loan 4½% 1925-45	98½	4	11	0	4	14	0
War Loan 4% (Tax free) 1929-42	101½	3	19	0	3	19	6
Funding 4% Loan 1960-1990	89½	4	9	6	4	11	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93¾xd	4	5	6	4	7	6
Conversion 4½% Loan 1940-44	98¾	4	11	2	4	13	0
Conversion 3½% Loan 1961	78	4	10	0	—		
Local Loans 3% Stock 1921 or after	65	4	12	0	—		
Bank Stock	262	4	12	0	—		
India 4½% 1950-55	93¾	4	16	0	4	19	6
India 3½%	71⅜	4	18	3	—		
India 3%	61¼	4	18	0	—		
Sudan 4½% 1939-73	96	4	13	9	4	15	0
Sudan 4% 1974	86	4	13	0	4	17	0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	83	3	12	0	4	8	0
Colonial Securities.							
Canada 3% 1938	86	3	10	0	4	16	0
Cape of Good Hope 4% 1916-36	95	4	4	3	4	19	6
Cape of Good Hope 3½% 1929-49	81½	4	5	6	4	18	6
Commonwealth of Australia 5% 1945-75	99½	5	1	0	5	2	0
Gold Coast 4½% 1956	95	4	14	6	4	17	6
Jamaica 4½% 1941-71	95½	4	14	0	4	16	0
Natal 4% 1937	94½	4	5	0	5	0	0
New South Wales 4½% 1935-45	90	5	0	0	5	7	0
New South Wales 5% 1945-65	99	5	1	0	5	3	0
New Zealand 4½% 1945	97	4	13	0	4	17	6
New Zealand 5% 1946	104	4	16	0	4	14	0
Queensland 5% 1940-60	100	5	0	0	5	0	6
South Africa 5% 1945-75	103	4	17	0	4	16	0
South Australia 5% 1945-75	98½	5	1	0	5	2	0
Tasmania 5% 1945-75	101	4	19	0	5	0	0
Victoria 5% 1945-75	99	5	1	0	5	0	0
West Australia 5% 1945-75	98	5	2	0	5	2	6
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	64½	4	13	0	—		
Birmingham 5% 1946-56	105	4	15	3	4	15	0
Cardiff 5% 1945-65	102xd	4	18	0	4	16	6
Croydon 3% 1940-60	71½	4	4	0	4	16	0
Hull 3½% 1925-55	77½	4	10	6	5	0	0
Liverpool 3½% Redeemable at option of Corporation	75½	4	13	0	—		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4	12	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64½	4	13	0	—		
Manchester 3% on or after 1941	64½	4	13	0	—		
Metropolitan Water Board 3% 'A' 1963–2003	65½	4	12	0	4	12	6
Metropolitan Water Board 3% 'B' 1934–2003	66	4	11	0	4	12	6
Middlesex C. C. 3½% 1927–47	83½	4	3	9	4	17	0
Newcastle 3½% Irredeemable	74	4	14	6	—		
Nottingham 3% Irredeemable	64½	4	13	0	—		
Stockton 5% 1946–66	101	4	19	0	4	19	0
Wolverhampton 5% 1946–56	103	4	16	6	4	19	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	82	4	17	6	—		
Gt. Western Rly. 5% Rent Charge	99½	5	0	0	—		
Gt. Western Rly. 5% Preference	93½xd	5	8	0	—		
L. & N. E. Rly. 4% Debenture	75½	5	6	0	—		
L. & N. E. Rly. 4% Guaranteed	70xd	5	14	0	—		
L. & N. E. Rly 4% 1st Preference	60½xd	6	12	0	—		
L. Mid. & Scot. Rly. 4% Debenture	80	5	0	0	—		
L. Mid. & Scot. Rly. 4% Guaranteed	77xd	5	4	0	—		
L. Mid. & Scot. Rly. 4% Preference	69½xd	5	15	0	—		
Southern Railway 4% Debenture	80	5	0	0	—		
Southern Railway 5% Guaranteed	97½xd	5	2	6	—		
Southern Railway 5% Preference	89½xd	5	12	0	—		